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No. 402

# In the Supreme Court of the United States

OCTOBER TERM, 1929

THE UNITED STATES OF AMERICA, PETITIONER

*v.*

GUARANTY TRUST COMPANY OF NEW YORK ET AL.

*ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT*

**BRIEF FOR THE UNITED STATES**

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### OPINIONS BELOW

The District Court filed a memorandum opinion (R. 72) adopting the conclusions reached in the report (R. 2) and attached memorandum (R. 17) of the Special Master. The opinion of the Circuit Court of Appeals for the Eighth Circuit (R. 81) is reported in 33 F. (2d) 533.

### JURISDICTION

The decree of the Circuit Court of Appeals was entered May 15, 1929. (R. 91.) This Court on August 13, 1929, extended the time for filing petition for writ of certiorari to September 17, 1929.

(R. 93.) Petition for writ of certiorari was filed on that date and was allowed October 21, 1929. (R. 93.) The jurisdiction of the Court rests on Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

### QUESTION PRESENTED

The question presented is whether under Revised Statutes, Section 3466, the indebtedness of an insolvent railroad to the United States which arose under Sections 207, 209, and 210 of the Transportation Act, 1920, is entitled to priority over amounts due prior mortgagees, unsecured preferred creditors, or unsecured general creditors.

### STATUTES INVOLVED

R. S. Section 3466 (U. S. C. Title 31, Sec. 191) provides:

> Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority hereby established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed.

Parts of Sections 207, 209, and 210 of the Transportation Act, 1920, c. 91, 41 Stat. 456, et seq., as amended, are set forth in the Appendix.

## STATEMENT

On July 26, 1923, a receiver of The Minneapolis & St. Louis Railroad Company (hereinafter sometimes referred to as the Minneapolis Railroad) was appointed by the District Court of the United States for the District of Minnesota upon application contained in a creditor's bill alleging that the railroad was insolvent and unable to pay its debts. (R. 1, 81.) The railroad's answer, filed the same day, admitted the allegations of the bill and joined in the prayer for the appointment of a receiver. (R. 1.) Subsequently actions were instituted for the foreclosure of mortgages on the railroad's property and were consolidated with the suit instituted by the creditor's bill. (R. 81.) These mortgages were made at various dates between 1877 and 1912, inclusive (before the indebtedness to the United States was incurred), and are valid record liens upon the properties of the railroad. (R. 10–13.) In the receivership proceedings certain creditors claimed an equitable lien superior to all other demands on account of claims which arose within six months prior to the receivership as a current expense of ordinary operation and which were contracted with the expectation and intention that they should be paid out of current earnings. (R. 81, 86.)

The United States properly filed with the receiver claims for certain amounts due it on obli-

gations arising under the provisions of the Transportation Act, 1920, c. 91, 41 Stat. 456. It contended that R. S. Section 3466 gave these claims priority over all others. (R. 81.) The decree entered by the District Court and affirmed by the Circuit Court of Appeals determined that these claims of the United States, with interest on the funded obligations to the date of receivership, were general claims without any priority in relation to any other claim. (R. 69, 91.) The claims for which the United States asserted priority arose as follows:

*Claim 2700. Item One*

A mortgage for $1,382,000, previously executed by the Minneapolis Railroad, matured April 1, 1921. To meet this obligation the Secretary of the Treasury, pursuant to Section 210 of the Transportation Act, 41 Stat. 468, made a loan to the railroad evidenced by its ten-year promissory note dated April 1, 1921, for $1,382,000, secured by certain of its refunding and extension mortgage bonds. (R. 4, 82.) Section 210, as amended by Section 5 of the Act of June 5, 1920, c. 235, 41 Stat. 874, 946, authorized the Secretary of the Treasury to make a loan to a railroad for a period not exceeding fifteen years, but only if application therefor was made within two years after termination of Federal control and the Interstate Commerce Commission found that "the making, in whole or in part, of the proposed loan by the United States

* * * is necessary to enable the applicant properly to meet the transportation needs of the public."

*Claim 2700. Item Three*

This claim arose under Section 207 of the Transportation Act, 41 Stat. 462. That section provides that as soon as practicable after the termination of Federal control the President shall ascertain (1) the amount of the indebtedness of each railroad to the United States, which may exist at the termination of Federal control, incurred for additions and betterments made during Federal control and properly chargeable to capital account, (2) the amount of indebtedness of such railroad to the United States otherwise incurred, and (3) the amount of indebtedness of the United States to such railroad arising out of Federal control; that the amount under (3) may be set off against the amounts under (1) and (2); that any remaining indebtedness arising under (1) shall at the request of the railroad be funded for a period of ten years from the termination of Federal control, or at a shorter period at the option of the railroad; and that any other indebtedness to the United States after mutual settlement of accounts shall be evidenced by notes due in one year from termination of Federal control, or a shorter period at the option of the railroad. Pursuant to this section, the Minneapolis Railroad gave its promissory note for $625,000 dated May 27, 1922, and due ten years after termination of Federal control, secured by certain

of its refunding and extension mortgage bonds. (R. 7, 82.)

*Claim 2700. Item Four*

This claim is represented by a promissory note of the Minneapolis Railroad for $625,000 dated April 1, 1923, payable on demand and secured by certain of its refunding and extension mortgage bonds. The note was given pursuant to Section 207 to fund the railroad's indebtedness to the United States due at the termination of Federal control. (R. 7, 82.)

*Claim 4186*

This claim arose under Section 209 of the Transportation Act, 41 Stat. 464. By this section the United States guaranteed each railroad which accepted its provisions a certain minimum operating income during the six months following the termination of Federal control. Subdivision (h) of this section directed the Secretary of the Treasury, on request of a railroad and on certification by the Interstate Commerce Commission, to advance during the six months' guaranty period such sums, not in excess of the estimated guaranty "as are necessary to enable it to meet its fixed charges and operating expenses." The railroad was also required to contract to repay any such excess advances. Subdivision (g) of this section provides that the Commission shall, as soon as practicable after the expiration of the guaranty period, certify to the Secretary of the Treasury the amounts necessary to make good the guaranty and the Secretary of

the Treasury is directed to pay the amount so certified.

The Interstate Commerce Commission determined that the amounts paid the Minneapolis Railroad under subdivisions (g) and (h) were $292,022.23 in excess of the amount payable to it by the United States under Section 209 and this determination is the basis of Claim 4186. (R. 9–10, 82.) The amount of this overpayment is disputed by the railroad and its receiver, and the decree of the District Court determined only the preferential status of the claim. (R. 10, 70.)

## SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

(1) In holding that R. S. Section 3466 does not apply to claims of the United States arising under the Transportation Act, 1920.

(2) In holding that the claims of the United States are not entitled to priority over claims of mortgagees of the Minneapolis Railroad.

(3) In holding that the claims of the United States are not entitled to priority over claims of the railroad's unsecured preferred creditors.

(4) In holding that the claims of the United States are not entitled to priority over claims of the railroad's unsecured general creditors.

## SUMMARY OF ARGUMENT

I. Claims of the United States on account of advances and credits to railroads under the Transpor-

tation Act, 1920, are within the express terms of R. S. Section 3466. The Government finds nothing in the Transportation Act which would warrant an inference that Congress intended to except claims arising thereunder from the priority rights given the United States by this section. The Act indicates that the advances and credits to railroads which it authorized the United States to grant were intended to establish the ordinary relationship of debtor and creditor. The decision in *Mellon* v. *Michigan Trust Company,* 271 U. S. 236, is not applicable. That case held that under the Federal Control Act certain claims of the Director General of Railroads arising against third persons in the ordinary course of railroad operation are not entitled to the benefits of this section. The decision turns upon special statutory limitations upon the assertion of Federal rights which are not found in the credit provisions of the Transportation Act.

II. While the courts have frequently expressed the view that under Section 3466 a claim supported by a specific lien on the debtor's property is prior to debts to the United States, it does not clearly appear that the question has been presented to this Court in any case in which it was necessary to the decision. The Government contends that the mortgagees' claims are subject to ~~the~~ general priority granted the United States by the section, and that this construction of the statute is not inequitable.

III. This Court has held that a general lien does not defeat the priority of the United States under

Section 3466. *Spokane County* v. *United States,* 279 U. S. 80. The creditors of the Minneapolis Railroad who claim an equitable lien have only a general or inchoate lien which must yield to the priority of the United States.

IV. The question of the priority of the United States over general unsecured creditors is not moot. The United States does not concede that the claims of the mortgagees and preferred creditors of the Minneapolis Railroad will absorb the entire amount realized on the sale of its property.

## ARGUMENT

### I

### REVISED STATUTES, SECTION 3466, APPLIES TO CLAIMS OF THE UNITED STATES WHICH AROSE UNDER THE TRANSPORTATION ACT, 1920

The claims of the United States are governed by Section 3466 if that section applies to claims arising under the Transportation Act. This was the view of the Circuit Court of Appeals and has not been disputed. The section applies where a debtor is insolvent and makes a voluntary assignment of all his property. The insolvency of the Minneapolis Railroad within the meaning of the statute is conceded. See *United States* v. *Butterworth-Judson Corporation,* 269 U. S. 504, 513–514. It was alleged in the creditor's bill and admitted in the railroad's answer thereto. The exception taken to the Master's finding of insolvency was withdrawn upon the hearing in the District Court.

(R. 17, 69.) It is equally clear that the consent given by the Minneapolis Railroad to the appointment of a receiver was a voluntary assignment of all its property within the meaning of Section 3466. *Price* v. *United States,* 269 U. S. 492; *United States* v. *Butterworth-Judson Corporation,* 269 U. S. 504, *supra.*

We submit that claims arising under the Transportation Act are debts to the United States and within the express provisions of Section 3466, but the Circuit Court of Appeals, relying on *Mellon* v. *Michigan Trust Company,* 271 U. S. 236, held that Congress by the Transportation Act intended to except claims arising thereunder from the benefits of this section.

That case involved the question whether Section 3466 applied to claims of the Director General of Railroads for transportation charges and for conversion of a shipment of iron ore arising while he was operating a railroad under the Federal Control Act, c. 25, 40 Stat. 451. That Act was passed to govern Federal operation of carriers which the President had taken over under his war powers. Section 10 subjected the Director General, as an operator of the railroads, to the laws and liabilities previously applicable to them as common carriers except in so far as inconsistent with that Act or any other Act applicable to Federal control or with any order of the President. It provided that suits might be brought by and against carriers and judgments rendered "as now provided by law" and that

in such suit no defense should be made "upon the ground that the carrier is an instrumentality or agency of the Federal Government." This Court held that Section 10, read in the light of all the provisions of the Act, manifested the intention that Federal control should make no change in the status of claims against third persons arising in the ordinary course of railroad operations and that such claims were not intended to be accorded the preferences of Section 3466. It said (p. 240):

> In the circumstances presented by this record, it is reasonable to say that the statute confined his substantive rights to those which a carrier would have had, and prohibits him, as though he were an actual defendant in a suit, from resisting the demands of others for equal distribution of the insolvent's assets, under the commonly-applied rule, upon the ground that he is an instrumentality of the federal government.

The Government submits that none of the provisions of the Transportation Act dealing with credits and advances are analogous to Section 10 of the Federal Control Act and that nothing in the purpose or policy of the Act indicates an intention to change any of the statutory rights of the United States as a creditor.

The Transportation Act of 1920 is a comprehensive statute dealing with many aspects of the railroad problem. It terminated Federal control, it established procedure for adjusting labor disputes,

it enlarged the powers of the Interstate Commerce Commission. The provisions of the Act here in question provided for advances and credits to the railroads by the United States. The Act does not, as did the Federal Control Act, relate to rights or liabilities having their inception in the temporary conduct of a business enterprise by the Government.

The credits to railroads authorized by the Transportation Act represent special and temporary aid to be given them in the period of readjustment following the return of their properties. The Government was not engaging in the business of making loans. The period of credit was in all cases strictly limited. The credit permitted was for the benefit of the railroads. The taking of credits or advances was optional with the railroads. But the United States was not making gifts to the railroads or their creditors. The relationship between the Government and the railroad established by the credit provisions of the Act was strictly that of creditor and debtor. Credits and advances were to bear interest at 6%, security was provided for and new loans were to be made only upon reasonable assurance of repayment. Section 210, dealing with new loans, requires a statement of—

> the present and prospective ability of the applicant to repay the loan and meet the requirements of its obligations in that regard; the character and value of the security offered * * *.

It permits the loan only if the Interstate Commerce Commission finds—

> that the prospective earning power of the applicant and the character and value of the security offered are such as to furnish reasonable assurance of the applicant's ability to repay the loan within the time fixed therefor, and to meet its other obligations in connection with such loan * * *.

Subdivisions (b) and (d) of Section 207, dealing with indebtedness to the United States incurred during Federal control, provide for funding upon such security as the President may prescribe or require.

In *Piedmont Corporation* v. *Gainesville & N. W. R. Co.*, 30 F. (2d) 525, the United States District Court for the Northern District of Georgia held that Section 3466 applied to advances made by the United States under Section 210 of the Transportation Act.

## II

### UNDER SECTION 3466 THE CLAIMS OF THE UNITED STATES SHOULD HAVE PRIORITY OVER CLAIMS OF MORTGAGEES OF THE MINNEAPOLIS RAILROAD

The Government concedes that a large body of judicial opinion supports the view that the priority of the United States under Section 3466 is subject to the claim of any creditor who holds a specific lien on the debtor's property. The weight that should be accorded these cases is fully recognized. The Circuit Court of Appeals, without deciding whether

this Court had directly determined the question, said that the reannouncement of the doctrine over a period of more than one hundred years established it as the consistent view of this Court.

The Government requests a reconsideration of the question in this case because of its great importance and because it appears doubtful whether it ever has been directly presented to this Court in any case where it was necessary to a decision. It believes that the priority for which it contends is not inequitable in the present case and would not as a general rule prove inequitable.

The wording of this section appears to support the Government's claim. The priority given the United States is broadly stated—"debts due to the United States shall be first satisfied." The language makes no exception in favor of mortgagees. In *Beaston* v. *Farmers' Bank,* 12 Pet. 102, 134, the Court said:

> And it is manifest, that congress intended to give priority of payment to the United States over all other creditors, in the cases stated therein. It, therefore, lies upon those who claim exemption from the operation of the statute, to show that they are not within its provisions.

The section is to be liberally construed. In the case last cited the Court said (p. 134):

> As this statute has reference to the public good, it ought to be liberally construed.

In *Bramwell* v. *United States Fidelity Company*, 269 U. S. 483, the Court said (p. 487):

> There exists now the same reasons for a liberal construction of the priority act as when the rule was laid down.

It has been held that the priority given by this section overrides a prior general lien created by State law. *Spokane County* v. *United States*, 279 U. S. 80, *supra*. This decision is especially significant because the claims superseded were county taxes and it consequently involved the question of infringing on the rights of a sovereign State.

Certain cases have suggested that property subject to a specific lien is not a part of the debtor's estate until the debt secured thereby has been satisfied. We nevertheless submit that the extent to which the priority statute goes is a question of the intent of Congress. If, as this Court held in *Spokane County* v. *United States*, 279 U. S. 80, *supra*, under Section 3466 claims of the United States displace claims of a creditor holding a prior general lien on the debtor's property, there seems to be no logical reason why claims of the United States should not outrank those of a creditor secured by a specific lien.

The Government's principal claim against the Minneapolis Railroad represents an advance of $1,382,000 which it made in 1921 for the purpose of meeting a mortgage in the same amount maturing in that year, which was a first lien on part of the

road. (R. 20.) This advance was made at a time of great credit stringency. The Transportation Act permitted an advance only if it was found to be necessary to enable the railroad to meet the transportation needs of the public. Furthermore, the Minneapolis Railroad had received from the United States in 1920 current advances during the six months' guaranty period following the termination of Federal control, which were authorized by the Transportation Act only if necessary to enable it to meet its fixed charges and operating expenses. (*Supra,* pp. 6–7.) It can hardly be said that the parties involved in this case contemplated that such debts as the Government is here trying to collect should not be given priority over the mortgage claim. The fact, of course, is that when the mortgages were executed no one ever considered the possibility that the loans in question would be made. They were incidental to the unprecedented emergency caused by the war. If the Government had not taken the action which it did, it is highly likely that the assets of the railroad on which the mortgages give liens would have deteriorated tremendously in value. The action of the Government was undoubtedly beneficial to the bondholders.

The mortgagees have relied upon *United States* v. *Hooe,* 3 Cranch 73; *Conard* v. *Atlantic Insurance Co.,* 1 Pet. 386; *Field* v. *United States,* 9 Pet. 182; and *Brent* v. *The Bank of Washington,* 10 Pet. 596, as adjudications by this Court that

the lien of prior mortgagees is under Section 3466 superior to the claims of the United States.

In *United States* v. *Hooe* a collector of customs, who was indebted to the United States, made a deed of trust to Hooe to indemnify him against liability as surety on the debtor's official bond and against liability to be assumed as endorser of the debtor's notes. The debtor having died, the United States claimed priority as against Hooe. The Court stated the issues relating to the priority statutes as follows (p. 90):

> This claim is opposed on two grounds. It is contended, 1st. That at the time of making this deed, Fitzgerald was not insolvent in point of fact; and 2d. That this deed was not a transaction which evidences insolvency under the act of congress.

The Court squarely decided the case on the second ground stated above. The opinion of the Court and the argument of Government counsel as reported show that the United States based its claim for priority solely upon the theory that the deed of trust constituted a voluntary assignment of the debtor's property within the meaning of the statute. We submit that this was the only question upon which the Court passed, although it did use language which has often been regarded as indicating that it felt that the statute did not give the United States priority over debts secured by mortgage.

In *Conard* v. *Atlantic Insurance Co.*, 1 Pet. 386, after a judgment for the United States, the marshal levied upon certain goods as the property

of the judgment debtor. The insurance company, contending that title to the goods had previously passed to it under a *respondentia* bond and accompanying bills of lading, brought an action of trespass against the marshal and recovered. This Court affirmed the judgment on the ground that the priority statute gave the United States no title to the property of an insolvent debtor and that the insurance company had title at the time of the levy. The decision did not turn upon the relative priority of the United States and mortgagees. The Court said (p. 442):

> In none of these cases, has it ever been decided, that in a conflict of satisfaction out of the thing itself, the priority of the United States cut out the lien of the particular creditor. And before such decision is made, it will deserve very grave deliberation, and a marked attention to what fell from the court, in *Nathan* v. *Giles,* 5 Taunt. 558, 574. At present, it is wholly unnecessary to decide it, for reasons which will hereafter appear.

*Field* v. *United States,* 9 Pet. 182, was a suit brought by the United States against the assignees of an insolvent debtor for refusing to pay a claim of the United States. The defense to the action was that other creditors had a privilege on the fund under the laws of the State and that the claim of the United States was not included in the schedule of distribution affirmed by the State court. The lower court entered judgment for the United States for $5,661.55 and interest. This Court approved the

opinion of the lower court on the issues thus presented but pointed out that, although the assignees had sold the debtor's property for $13,000 more than the amount of his mortgage debts, nearly $25,000 of the sales price was represented by promissory notes and that it did not judicially appear that these notes had been paid. It sent the case back to the lower court for further proceedings on the theory that the claim of the United States was payable only out of funds available after satisfying the liens of mortgagees.

With a fund more than twice the amount of the claim of the United States apparently available to satisfy its judgment, it is improbable that the Government presented to the Court any claim for priority over the mortgagees.

In *Brent* v. *The Bank of Washington,* 10 Pet. 596, a decedent owned at the time of his death certain shares of stock in a bank located in the District of Columbia. The bank's charter provided that its stock could not be transferred without its consent, if the stockholder was indebted to the bank. The decedent died indebted to the bank and to the United States. Suit was brought by the executors for the use of the United States to compel the bank to transfer the stock. The bank defended on the ground that its claims had not been paid. One of the bank's contentions, stated in the report of the case at page 603, is:

> That even if the United States have a priority of payment, by the act of 1799 the char-

ter of the bank affects it; there being in the charter no exception in favor of the United States.

The Court held that the rights given by the bank's charter furnished a complete answer to a suit at law by the executors against the bank for not permitting a transfer; that the same objection was fatal to a suit at law in their name for the use of the United States; and that there was no reason for equity to act since the bank lent its money in good faith. Although the opinion discusses the priority statute, it does not clearly appear that the views expressed were considered a necessary part of the decision, except to the extent of holding that the priority statute does not give the United States such a lien on the debtor's property as will prevent a valid transfer of legal title after the indebtedness to the United States arose.

## III

### UNDER SECTION 3466 THE CLAIMS OF THE UNITED STATES SHOULD HAVE PRIORITY OVER CLAIMS OF THE RAILROAD'S UNSECURED PREFERRED CREDITORS

All of the reasons advanced for holding the priority granted in Section 3466 applicable to mortgagees apply with equal or greater force to the six-months' claimants.

Claims arising within six months of a receivership as a current expense of ordinary operation and contracted with the intention that they be paid out of current earnings may under some circumstances be enforced in equity and thus be regarded as in

the nature of equitable liens. *Fosdick* v. *Schall*, 99 U. S. 235; *Burnham* v. *Bowen*, 111 U. S. 776.

If the priority given by Section 3466 defeats even a statutory general or inchoate lien, it must likewise defeat a general equitable lien.

*Spokane County* v. *United States*, 279 U. S. 80, *supra*, held that the priority of the United States displaced a general lien for taxes given by State law. The Court said (p. 95):

> Whatever might have been the effect of more completed procedure in the perfecting of the liens under the law of the State, upon the priority of the United States herein, the attitude of the state court relieves us of consideration of it.

In *Thelusson* v. *Smith*, 2 Wheat. 396, this Court said (p. 426):

> A judgment gives to the judgment creditor a lien on the debtor's lands, and a preference over all subsequent judgment creditors. But the act of congress defeats this preference in favor of the United States, in the cases specified in the 65th section of the act of 1799.

*Piedmont Corporation* v. *Gainesville & N. W. R. Co.*, 30 F. (2d) 525, *supra*, held that a lien for wages and supplies given by a State law, which lien applies generally to all the property of the railroad, must yield to the priority of the United States under Section 3466.

The Circuit Court of Appeals suggested that it was illogical to hold that the mortgagees came ahead of the United States and the United States ahead of creditors having an equitable lien, while the latter might be preferred in equity to the mortgagees. The Government submits that such a result is not illogical. The mortgagees, who have asked the aid of a court of equity, should be compelled to do equity. As the United States is relying on a legal right created by statute and is demanding no equitable relief, it can not be subjected to the requirements of equitable relief as a condition to having its statutory right recognized. This would seem to follow from a *dictum* in *Fosdick* v. *Schall,* 99 U. S. 235, 253, *supra,* to the effect that if a mortgagee elects to pursue a strict foreclosure, he can not be compelled to do equity. If this Court holds in this case that the mortgage liens are prior to the claims of the United States under Section 3466, we submit that a fund equal to the amount of the mortgage claims should be set aside out of which both the six-months' claimants and mortgagees should be paid according to their respective priorities, as determined by the court, and that out of all assets then remaining the claims of the United States should be paid ahead of all other claims, even if this results in leaving part of the claims of the mortgagees unpaid.

## IV

### UNDER SECTION 3466 THE CLAIMS OF THE UNITED STATES SHOULD HAVE PRIORITY OVER CLAIMS OF THE RAILROAD'S UNSECURED GENERAL CREDITORS

If Section 3466 applies to the claims of the United States, they are prior to the general unsecured claims.

The decree of the District Court which the Court of Appeals affirmed gave the United States no priority over general creditors, and if Section 3466 is applicable, the decree must be modified.

The only remaining question is whether this is a moot issue in the case. The Circuit Court of Appeals stated that "it is conceded that the estate will not realize more than enough to discharge the mortgage indebtedness and preferred claims." (R. 90.) The United States makes no such concession, as it is impossible to predict in advance the amount for which the railroad property may be sold. The issue therefore is not moot. The United States asserted its claim to priority over all other creditors in the courts below (R. 72) and in the petition for certiorari specifically assigned as error the holding that its claims are not entitled to priority over the claims of general creditors.

## CONCLUSION

We submit that the decrees of the Circuit Court of Appeals and of the District Court should be reversed with directions to enter a decree which will give the claims of the United States arising under Sections 207, 209, and 210 of the Transportation Act priority over all other claims.

CHARLES E. HUGHES, Jr.,
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DECEMBER, 1929.

## APPENDIX

Transportation Act, 1920, c. 91, 41 Stat. 456, 462–466, as amended by Act of June 5, 1920, c. 235, 41 Stat. 874, 946:

SEC. 207. (a) As soon as practicable after the termination of Federal control the President shall ascertain (1) the amount of the indebtedness of each carrier to the United States, which may exist at the termination of Federal control, incurred for additions and betterments made during Federal control and properly chargeable to capital account; (2) the amount of indebtedness of such carrier to the United States otherwise incurred; and (3) the amount of the indebtedness of the United States to such carrier arising out of Federal control. The amount under clause (3) may be set off against either or both of the amounts under clauses (1) and (2), so far as deemed wise by the President * * *.

(b) Any remaining indebtedness of the carrier to the United States in respect to such additions and betterments shall, at the request of the carrier, be funded for a period of ten years from the termination of Federal control, or a shorter period at the option of the carrier, with interest at the rate of 6 per centum per annum, payable semiannually, subject to the right of such carrier to pay,

on any interest-payment day, the whole or any part of such indebtedness. Any carrier obtaining the funding of such indebtedness as aforesaid shall give, in the discretion of the President, such security, in such form and upon such terms, as he may prescribe.

* * * * *

(d) Any other indebtedness of any such such carrier to the United States which may exist after the settlement of accounts between the United States and the carrier and is then due shall be evidenced by notes payable in one year from the termination of Federal control, or a shorter period at the option of the carrier, with interest at the rate of 6 per centum per annum, and secured by such collateral security as the President may deem it advisable to require.

SEC. 209. (a) When used in this section—

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The term "guaranty period" means the six months beginning March 1, 1920.

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(c) The United States hereby guarantees—

(1) With respect to any carrier with which a contract (exclusive of so-called cooperative contracts or waivers) has been made fixing the amount of just compensation under the Federal Control Act, that the railway operating income of such carrier for the guaranty period as a whole shall not be less than one-half the amount named in such contract as annual compensation, or, where the contract fixed a lump sum as compensation

for the whole period of Federal operation, that the railway operating income of such carrier for the guaranty period as a whole shall not be less than an amount which shall bear the same proportion to the lump sum so fixed as six months bears to the number of months during which such carrier was under Federal operation, including in both cases the increases in such compensation provided for in section 4 of the Federal Control Act;

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(g) The Commission shall, as soon as practicable after the expiration of the guaranty period, ascertain and certify to the Secretary of the Treasury the several amounts necessary to make good the foregoing guaranty to each carrier. The Secretary of the Treasury is hereby authorized and directed thereupon to draw warrants in favor of each such carrier upon the Treasury of the United States, for the amount shown in such certificate as necessary to make good such guaranty. An amount sufficient to pay such warrants is hereby appropriated out of any money in the Treasury not otherwise appropriated.

(h) Upon application of any carrier to the Commission, asking that during the guaranty period there may be advanced to it from time to time such sums, not in excess of the estimated amount necessary to make good the guaranty, as are necessary to enable it to meet its fixed charges and operating expenses, the Commission may certify to the Secretary of the Treasury the amount of, and times at which, such advances, if any,

shall be made. The Secretary of the Treasury, on receipt of such certificate, is authorized and directed to make the advances in the amounts and at the times specified in the certificate, upon the execution by the carrier of a contract, secured in such manner as the Secretary may determine, that upon final determination of the amount of the guaranty provided for by this section such carrier will repay to the United States any amounts which it has received from such advances in excess of the guaranty, with interest at the rate of 6 per centum per annum from the time such excess was paid. There is hereby appropriated, out of any money in the Treasury not otherwise appropriated, a sum sufficient to enable the Secretary of the Treasury to make the advances referred to in this subdivision.

SEC. 210. (a) For the purpose of enabling carriers by railroad subject to the Interstate Commerce Act properly to serve the public during the transition period immediately following the termination of Federal control, any such carrier may, at any time after the passage of this Act, and before the expiration of two years after the termination of Federal control make application to the commission for a loan from the United States to meet its maturing indebtedness, or to provide itself with equipment or other additions and betterments, setting forth the amount of the loan; the term for which it is desired; the purpose of the loan and the use to which it will be applied; the present and prospective ability of the applicant to repay the loan and

meet the requirements of its obligations in that regard; the character and value of the security offered; and the extent to which the public convenience and necessity will be served. The application shall be accompanied by statements showing such facts in detail as the commission may require with respect to the physical situation, ownership, capitalization, indebtedness, contract obligations, operation, and earning power of the applicant, together with such other facts relating to the propriety and expediency of granting the loan applied for, and the ability of the applicant to make good the obligation as the commission may deem pertinent to the inquiry.

(b) If the commission, after such hearing and investigation, with or without notice, as it may direct, finds that the making, in whole or in part, of the proposed loan by the United States, for one or more of the aforesaid purposes, is necessary to enable the applicant properly to meet the transportation needs of the public, and that the prospective earning power of the applicant and the character and value of the security offered are such as to furnish reasonable assurance of the applicant's ability to repay the loan within the time fixed therefor, and to meet its other obligations in connection with such loan the commission shall certify to the Secretary of the Treasury its findings of such facts; also the amount of the loan which is to be made; the time, not exceeding fifteen years from the making thereof, within which

it is to be repaid; the terms and conditions of the loan, including the security to be given for repayment; that the prospective earning power of the applicant, together with the character and value of the security offered, furnish, in the opinion of the commission, reasonable assurance of the applicant's ability to repay the loan within the time fixed therefor and reasonable protection to the United States; and that the applicant, in the opinion of the commission, is unable to provide itself with the funds necessary for the aforesaid purposes from other sources.

(c) Upon receipt of such certificate from the commission the Secretary of the Treasury shall immediately, or as soon as practicable, make a loan of the amount recommended in such certificate out of any funds in the revolving fund provided for in this section and accept the security prescribed therefor by the commission. All such loans shall bear interest at the rate of 6 per centum per annum, payable semiannually, to the Secretary of the Treasury, and to be placed to the credit of said revolving fund. The form of obligation to be entered into shall be prescribed by the Secretary of the Treasury, but the time, not exceeding fifteen years from the making thereof, within which such loan is to be repaid, the security which is to be taken therefor, and the terms and the conditions of the loan shall be in accordance with the findings and the certificate of the commission.

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